



**Multistate Tax Commission
Fiscal Year 2006 Annual Report**

**Legal Division
Litigation Committee
Uniformity Committee**

The following report reflects the activities of the MTC Legal Division and of the two standing committees it staffs, Litigation Committee and Uniformity Committee, for fiscal year 2006.

I. MTC Standing Committees

A. Litigation Committee

The MTC Litigation Committee is chaired by Marshall Stranburg, FL. Mark Wainwright and Clark Snelson, UT, are co-vice chairs of the Committee. During fiscal year 2006, the Litigation Committee had in-person meetings in Boise, Idaho and Nashville, Tennessee.

During fiscal year 2006 the Litigation Committee completely overhauled its meeting format. We moved from short summary discussions of recent U.S. Supreme Court and key state tax cases to more in-depth presentations and discussions of current important legal topics affecting multiple states. The Legal Division organizes these meetings and makes some of the presentations. Our recent meetings, for example, included presentations from the Division and from our members on real estate investment trusts, intangible holding company nexus and expense add-back issues, emerging nexus jurisprudence, UDITPA sales factor problems and more. The change has been very well received by our membership.

Legal Division is also working to structure new ways for our Litigation Committee members to coordinate on cases and issues affecting multiple states, especially on cases arising from MTC joint audits. These are not yet operational, but work has begun and is a priority for our Division.

B. Uniformity Committee

The MTC Uniformity Committee is chaired by Ted Spangler, ID. Wood Miller, MO chairs the Income & Franchise Tax Subcommittee and Adina Christian, TX, chaired the Sales & Use Tax Subcommittee. The Committee held three in-person and several conference calls during fiscal year 2006. Uniformity Committee related work during this fiscal year included legal and economic research, model statute drafting and model

regulation drafting on several uniformity projects. Members of the Legal Division also served as public hearing officer and drafted hearing officer reports and other explanatory memorandum for the Executive Committee's consideration of past uniformity projects. These uniformity projects included:

- Proposed Model Statute Requiring Add-back of Certain Intangible and Interest Expenses (now before the Full Commission)
- Proposed Model Statute on Reportable Transactions and State Filing Positions (now before the Full Commission)
- Proposed Model Statute for Tax Avoidance Transaction Voluntary Compliance Program (now before the Full Commission)
- Proposed Amendments to MTC Regulation Regarding "On Behalf Of" Language (approved for Public Hearing)
- Proposed Model Regulation for Telecommunications Sales Factor Apportionment (under development at the Uniformity Committee)
- Proposed Model Statutes for Regulated Investment Companies and Real Estate Investment Trusts (under development at the Uniformity Committee)
- Proposed Model Amendments to UDITPA Section 17 (under development at the Uniformity Committee)
- Proposed Model Regulation Regarding Hotel Intermediaries (under development at the Uniformity Committee)
- Proposed Model Regulation Regarding Statistical Sampling (under development at the Uniformity Committee)
- Possible Project Regarding §1031 Deferred Gains on Sales of Real Property (under consideration for adoption as a Uniformity Committee Project)

II. Legal Division

In addition to staffing the Litigation and Uniformity Committees, the Legal Division has performed the following activities during FY 2006.

A. Support for Individual Member States

During this fiscal year, the Legal Division filed amicus briefs in two state Supreme Court cases, *Microsoft Corporation v. Franchise Tax Board* and *General Motors v. Franchise Tax Board*. A member of the legal division participated in oral arguments before the California Supreme Court as amicus in the *General Motors* case. In addition, legal staff continues to provide information and analysis to attorneys in several member states on issues currently under litigation in their states. A new service we have begun providing is coordination and assistance for attorneys in multiple states that are litigating issues arising from MTC audits.

A member of the Legal Division served as an instructor for the MTC's Corporate Income Tax course provided to state tax administrators, auditors, attorneys, policy analysts and taxpayer assistance personnel in Montpelier, Vermont and in Helena, Montana.

Legal Division members also assisted our states by participating in meetings in states that are considering legislation to adopt MTC model uniformity proposals, including presentation of testimony to the New Mexico Legislature.

B. Service to the Public and Other Organizations

Legal Division members made several presentations at various conferences, including a presentation on MTC activities at the Council on State Taxation annual conference, a similar presentation to the Tax Executives Institute, a presentation on needed changes to UDITPA at the Federation of Tax Administrator's Annual Conference and more. MTC legal staff continues to provide support to the states as they work towards bringing up the Streamlined Sales Tax System, by attending meetings and participating in teleconferences. We also assisted the U.S. Department of State, Office of Foreign Missions in developing a program designed to help diplomats meet their sales tax obligations on purchases made in the U.S.

C. Support of Commission Administration and Other Commission Functions

The legal staff continues to assist the Audit Program with on-going audits, such as working to obtain nexus information associated with the audit of a technology company and providing legal analysis regarding nexus issues associated with the audit of a bank. In addition, the Legal Division assists in addressing legal issues that arise in the course of Commission administration. The Legal Division put together the Commission's fiscal year 2005 annual report, which is submitted to our member states' legislatures and governors' offices. Legal Division also continues to provide significant support for the annual meeting, including staffing the resolutions committee, making presentations at the annual seminar, preparing the executive and full commission meeting materials (including the artwork), and taking executive committee and business meeting minutes.